

1 Honorable Ronald B. Leighton  
2 U.S. District Judge  
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13 UNITED STATES DISTRICT COURT  
14 FOR THE WESTERN DISTRICT OF WASHINGTON  
15 AT TACOMA  
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18 KRISTINE M. NEIDINGER,

19 NO. C10-5702 RBL

20 vs. Plaintiff,

21  
22 DEFENDANTS' PROPOSED JURY  
23 INSTRUCTIONS  
24  
25

ELIZABETH WYATT EARP; RICHARD D. MALIDORE and LOIS K. MALIDORE and the marital community thereof; JAMES PATRICK WILLIAMS and REBEKAH JILL WILLIAMS and the marital community thereof; and JULIE McARTHUR and ALLEN McARTHUR and the marital community thereof,

Defendants.

19  
20 Defendants respectfully request the Court to submit to the jury the following  
21 instructions.  
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23 DATED this 7th day of September, 2012.  
24  
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s/ MICHELLE LUNA-GREEN  
MICHELLE LUNA-GREEN/WSB#27088  
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DEFENDANTS' PROPOSED JURY INSTRUCTIONS			
Number	Title	Source	Page No.
1	Particular rights – fourth amendment – unreasonable seizure of person – excessive force	9 <sup>th</sup> Cir. Model Jury Instructions 9.22 (modified); <i>Graham v. Connor</i> , 490 U.S. 386, 396-97, 109 S.Ct. 1865, 1872 (1989); <i>Scott v. United States</i> , 436 U.S. 128, 137-39, 98 S.Ct. 1717, 1723-24, 56 L.Ed.2d 168 (1978); <i>Hazeltine v. Montoya</i> , 2012 WL 761242, 8 (E.D.Cal. 2012)	2
2	Integral Participation	<i>Cunningham v. Gates</i> , 229 F.3d 1271, 1289 -1290 (9 <sup>th</sup> Cir. 2000)	2
-	Defendants' Proposed Jury Interrogatories	See Trial Brief	Interrogatories p. 1 & 2

1 Defendants' Proposed Instruction No. 1

2 **PARTICULAR RIGHTS – FOURTH AMENDMENT-UNREASONABLE SEIZURE OF**  
3 **PERSON-EXCESSIVE NONDEADLY FORCE**

4 In general, a seizure of a person is unreasonable under the Fourth Amendment if a corrections  
5 officer uses excessive force in restraining another or in defending himself, herself or others.  
6 Thus, in order to prove an unreasonable seizure in this case, the plaintiff must prove by a  
7 preponderance of the evidence that the officers used excessive force when they used force  
8 upon plaintiff in placing her in restraints while in the individual booking cell.

9 Under the Fourth Amendment, a corrections officer may only use such force as is "objectively  
10 reasonable" under all of the circumstances. In other words, you must judge the  
11 reasonableness of a particular use of force from the perspective of a reasonable officer on the  
12 scene and not with the 20/20 vision of hindsight and *without regard to their underlying intent or motivation.*

13 In determining whether the officers used excessive force in this case, consider all of the  
14 circumstances known to the officers on the scene, including:

1. The severity of the crime or other circumstances to  
which the officers were responding;
2. Whether the plaintiff posed an immediate threat to the  
safety of the officers or to others;
3. Whether the plaintiff was actively resisting arrest  
restraint or attempting to evade arrest restraint by flight;
4. The amount of time and any changing circumstances  
during which the officer had to determine the type and  
amount of force that appeared to be necessary;
5. The type and amount of force used;
6. The availability of alternative methods to subdue the  
plaintiff; and
7. Whether inmate posed an immediate threat to the safety  
of herself.
8. *Whether plaintiff's actions posed a threat to maintaining  
security and order in the jail.*

9th Circuit Model Civil Jury Instruction 9.22 (2007) (modified); *Graham v. Connor*, 490 U.S.

1 386, 396-97, 109 S.Ct. 1865, 1872 (1989); *Scott v. United States*, 436 U.S. 128, 137-39, 98  
2 S.Ct. 1717, 1723-24, 56 L.Ed.2d 168 (1978) (“An officer’s evil intentions will not make a  
3 Fourth Amendment violation out of an objectively reasonable use of force). *See Hazeltime v.*  
4 *Montoya*, 2012 WL 761242, 8 (E.D.Cal. 2012) (“the Graham factors do not adequately take  
into consideration the governmental interests at stake when resistance occurs in a custodial  
setting).

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1 Defendants' Proposed Instruction No. 2

2 INTEGRAL PARTICIPATION

3 Even if an officer's actions do not independently constitute excessive force, that officer may  
4 be liable for excessive force used against another person if that officer was an integral  
5 participant to that use of force. An officer is an integral participant if he participated in some  
6 meaningful way in that use of force, was aware of the use of force to be used, and did not  
7 object to it and had a realistic opportunity to intercede and failed to do so.

8 *Cunningham v. Gates*, 229 F.3d 1271, 1289 -1290 (9<sup>th</sup> Cir. 2000)

1  
2 Honorable Ronald B. Leighton  
3 U.S. District Judge  
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10 KRISTINE M. NEIDINGER,

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11 vs.  
12 Plaintiff,

DEFENDANTS' PROPOSED JURY  
13 INTERROGATORIES  
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COUNTY OF PIERCE; ELIZABETH  
WYATT EARP; RICHARD D. MALIDORE  
and LOIS K. MALIDORE and the marital  
community thereof; JAMES PATRICK  
WILLIAMS and REBEKAH JILL  
WILLIAMS and the marital community  
thereof; and JULIE McARTHUR and  
ALLEN McARTHUR and the marital  
community thereof,

Defendants.

Answer the following questions only if you find a deputy or deputies used excessive force.

We, the jury, answer questions submitted by the Court as follows:

QUESTION NO. 1: When officers entered the cell to restrain plaintiff, had plaintiff obeyed commands by turning and facing the wall?

Answer "Yes" or "No"

ANSWER:  Yes  No

1                   QUESTION NO. 2: Did any officer choke or attempt to choke plaintiff with their hands?  
2                   Answer "Yes" or "No"

3                   ANSWER:            Yes            No  
4

5                   QUESTION NO. 3: Did Sergeant Malidore continue to tase plaintiff after she was placed in  
6                   restraints?

7                   Answer "Yes" or "No"

8                   ANSWER:            Yes            No

9                   Verdict returned this \_\_\_\_ day of September 2012.  
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11                   \_\_\_\_\_  
12                   Presiding Juror  
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